

**To:** Senate Agriculture Committee, Montana Legislature

**From:** Kelly A. Pohl, Land Protection Specialist

**Date:** February 19, 2009

**RE:** Testimony in opposition to Senate Bill 478

**Mr. Chairman and Committee Members:** My name is Kelly Pohl, and I am a native Montanan and land conservation practitioner with the Gallatin Valley Land Trust in Bozeman. It is my job to work with private landowners who are interested in granting conservation easements. I have had the great privilege of helping many landowners, like Mr. Skip Pessl, explore their options and reach their goals for conservation of their land.

On behalf of several other landowners that were unable to be here today, I would like to submit the following testimony on their behalf (*full letters are attached*):

From **Wally and Pat Brownell**, 4<sup>th</sup> generation farmers with an easement since 2004:

"In January of 2004 we entered into a contract with the Gallatin Valley Land Trust and placed 1,550 acres of our land into conservation easement. We did this to insure that this land would remain as an unadulterated farm in perpetuity. We view this easement as a tribute to those who came before us, and a gift for generations to come."

From **Kevin Kennedy**, a 4<sup>th</sup> generation Montanan and conservation easement donor in Gallatin County:

"Placing a conservation easement on your own land is a private and personal choice that a family makes. There are many reasons that a landowner may want to go this route. One of the main and possibly the most important reason is that he has the right to do with his land as he wishes while considering what is best for the family and the land."

From **Eva Patten**, owner of a conservation easement in Gallatin Canyon sine 1997:

"We look to our State Legislators as guardians of our property rights. The ability to put a permanent conservation easement on one's land is one of those rights. ...We could not have [created a conservation easement on our Gallatin Canyon ranch] under the terms of this bill. It would have been financially impossible without the federal tax deduction and would not have served our goal of protecting this outstanding ranch from development."

From **Sherwin Leep**, third generation farmer and rancher in Gallatin County:

"Those of us who have chosen to protect our property know what we are doing. We know what is most advantageous for our own unique situation. Temporary conservation easements sound good. But when the ability to enter into permanent easements that are administered by folks who live and work in our own communities is removed—along with the resulting necessary tax incentives—you have inadvertently crippled the whole conservation process in Montana. By so doing, we are all the poorer."

From **Bruce McLeod**, operator of the Spear Lazy U Ranch in the Shields Valley and conservation easement donor:

"I would ask the members of the committee to ponder several questions. Why would legislation that will invariably promote further breaking of Montana ranches into smaller housing sites be good for Montana? Why do some folks feel that landowners should not have the right to decide how to care for the land? ...Why would it be prudent to deprive landowners of one more way of trying to make a living on the land by taking away federal tax benefits?"

And finally, from **Ken Sievert**, forth generation Montanan with a conservation easement on his family land in Gallatin County:

"The proposed change to the current law undermines the binding promise of state citizens already committed to perpetuity and suggests a half-way solution: you can kind of have a conservation easement but you can't really have a fully committed easement. This smacks of the daughter that explains that she is 'only a little bit pregnant'."

Mr. Chairman and Committee Members, it is an honor to testify on the behalf of these, and many other landowners who couldn't be here today. As you've heard, eliminating the possibility of perpetual easements and the tax benefits, funding sources, and peace of mind that accompany them is not fair to private landowners, and not a good choice for Montana.

Thank you for your time and consideration this afternoon, and for your service to our great state.

Sincerely,



Kelly A. Pohl  
Land Protection Specialist

February 18, 2009

Committee Members:

We ask for a moment of your time to allow us to express our deepest **opposition** to bill LC1982 (SB 478) that is now before you for your consideration. The intention of this bill is to place an end to the perpetuity conservation easements in the State of Montana.

In January of 2004 we entered into a contract with the Gallatin Valley Land Trust and placed 1550 acres of our land into Conservation easement. We did this to insure that this land would remain as an unadulterated farm in perpetuity. We view this easement as a tribute to those who came before us, and a gift for generations to come, so that they will be able to enjoy this oasis of the past as it will become part of their future.

This land as it is today was homesteaded by the Brownell family in the mid 1800's. Wally is 4<sup>th</sup> generation of the Brownell family living and farming this land.

Needless to say these decisions to preserve verses develop required that we make significant monetary concessions. Now to think that there is a possibility of loosing this assurance is unacceptable.

Please give due consideration to the total ramifications of this bill as it will affect all of us now, as well as into the future, and say NO.  
Thank you for your time.

Wallace and Patricia Brownell  
9765 Dry Creek Road  
Belgrade, Montana 59714

Cc: Scott Sales  
Gallatin Valley Land Trust

**From:** Eva Patten [epatten@mcn.net]

**Sent:** Tuesday, February 17, 2009 12:19 PM (via email to the Committee)

**Subject:** Re: Bad CE Bills

Dear Senate Agriculture Committee:

I cannot imagine why this bill was introduced. We look to our State Legislators as guardians of our property rights. The ability to put a permanent conservation easement (CE) on one's land is one of those rights. Our family has a CE on our ranch, the Black Butte Ranch, along the Gallatin River adjacent to Yellowstone National Park. We did this to allow the ranch to remain with the family after we have passed on. We did this to never allow buildings along this popular blue ribbon trout stream and to protect the viewshed for YNP visitors. We could not have done this under the terms of the bill. It would have been financially impossible without the federal tax deduction and would not have served our goal of protecting this outstanding ranch from development.

Eva Patten

[epatten@mcn.net](mailto:epatten@mcn.net)

8945 Trooper Trail

Bozeman, MT 59715

406-582-0486

February 17, 2009

To the members of the Senate Agriculture Committee:

My name is Kevin K. Kennedy and I live in Bozeman, MT. I am a fourth generation Montanan and a native of Gallatin County. Our ranch has always been a cattle and hay operation. We placed our 337 acre ranch into a conservation easement in 2007.

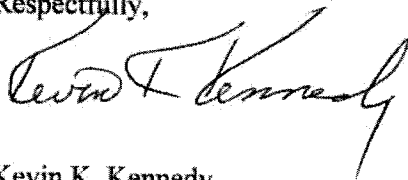
There were two main reasons that my family decided to place our ranch in a conservation easement. First, we wanted to make sure that the ranch would never be developed for housing or businesses regardless of who might ever own the land. We wanted to make sure that the wildlife that the ranch now supports will always have a place to live given the current trend of subdividing huge parcels of land for the purpose of development. Our land has approximately one mile of river frontage on the West Gallatin River. Large herds of whitetail deer, ducks, geese, upland game birds and nesting bald eagles live on our ranch. There is even a small flock of wild turkeys starting thrive on the ranch. We allow limited hunting and fishing to the public on our land so it's not like our own private wildlife preserve.

The second reason we placed a conservation easement on our land was for estate planning purposes by getting federal estate tax benefits. Without the estate tax benefit, it would be doubtful if my family would be able to retain ownership of the ranch once both my parents die. We would probably have to sell part or all of the ranch to pay the death tax.

Placing a conservation easement on your own land is a private and personal choice that a family makes. There are many reasons that a landowner may want to go this route. One of the main and possibly the most important reason is that HE HAS THE RIGHT TO DO WITH HIS LAND AS HE WISHES while considering what is best for the family and the land. Family farms and ranches are almost a thing of the past. These farms and ranches benefit their communities with open space, scenic beauty and wildlife which they provide instead of just another sprawling subdivision with tract housing to look at. The family farms and ranches provide jobs and food for the local community, the state, the nation and parts of the world. If these farms and ranches are lost because the families that own them can no longer afford to keep the land due to estate taxes, I think everyone will lose.

I urge the members of the Senate Agriculture Committee to oppose SB 478.

Respectfully,



Kevin K. Kennedy  
2505 Jackrabbit Lane  
Bozeman, MT 59718

February 18, 2009

**Honorable members of the Senate Agriculture Committee:**

My name is Sherwin Leep and I am a partner in the Leep Hay and Grain Partnership consisting of my brother, Greg, and my father, Andy. We are third generation natives of the Bozeman area and have been farming and ranching in the Gallatin Valley our entire lives.

In the course of our careers, we have witnessed an especially troubling and short-sighted trend in our fertile and picturesque valley. Historic and productive properties, that have provided support for farm and ranch families for generations, are now being carved up at an alarming rate by largely out-of-state sub-dividers and developers—many of whom are looking for the next quick buck to turn. Needless to say, the landscape of our valley has changed dramatically. It is nearly enough to bring tears to the eyes of someone who cares deeply about the legacy of agriculture in our great state.

While infringements on a family's right to sell to the highest bidder can be troubling, it is also very disturbing to a landowner when someone attempts to dictate what one can or cannot do when it comes to preserving the land in its natural state. When it came time for our family to consider different options as to the use of our land, it was of course tempting to try to maximize the financial outcome. However, when we looked at the potentials to be gained by establishing a permanent conservation easement, it soon became the more compelling option for us. Below are listed the reasons why we decided it was the direction we wanted to go:

- Our desire is to see the tradition of farming/ranching continue in our valley and for our family. We have four sons who have expressed an interest in agriculture. We are willing to work in any way we can to help protect that opportunity for them.
- Gallatin County Open-space bond money and Trust for Public Lands funding was an important component in our decision to permanently preserve one of the most beautiful and productive parcels of farmland in our valley.
- State and Federal Income Tax deduction incentives were crucial. When we looked at the opportunity cost from the inability to ever develop the property, the income tax deductions were a significant incentive to proceed with the easement.
- Federal Estate Tax reduction also helped assure the future for our kids in farming and ranching. Without the easement, it would have been one more hurdle to clear in passing our property the next generation.
- By entering the land into a perpetual easement agreement, we were able to leverage the funds generated to purchase additional land. This was another critical step in helping secure our future in an area of our state where agriculture is increasingly at risk.
- We have experienced an intangible benefit that we really did not expect: We are proud that our family has contributed in a real way in keeping a pristine piece of farm property from the chopping block—and that we, along with the county, can enjoy it—forever we hope!

Please consider carefully how your bill will impact families like ours who would be adversely impacted by your bill. Remember that any time government enters into the decision-making process for land uses, they are at great risk of infringement on personal private property rights. Those of us who have chosen to protect our property know what we are doing. We know what is most advantageous for our

own unique situation. We really do not need or want your perspective on how long or if we should encumber our property in this way. Temporary conservation easements sound good. But when the ability to enter into permanent easements that are administered by folks who live and work in our own communities is removed--along with the resulting necessary tax incentives--you have inadvertently crippled the whole conservation easement process in Montana. By so doing, we are all the poorer.

Our thanks to all of you for your hard work and commitment to Montana-- it is a huge job, and we appreciate you. We happen to believe it is in all our best interest to continue to work together to keep this special place we all love **more like what it was than what it might become**. Please don't jeopardize one of the most important tools we have to accomplish just that. It is our turn to be watchman at the gate. Let's not turn our back at such a critical time! If SB478 passes, we will be fighting this inevitable change marching toward us with one arm tied behind our back.

Thanks also for the opportunity to voice my concern.

Sherwin Leep,

Leep Hay & Grain Partnership

531 Cobb Hill Road

Bozeman, MT 59718

February 18, 2009

To: The Members of the (Senate) Agriculture, Livestock and Irrigation Committee

From: Bruce R. McLeod

Re: SENATE BILL NO. 478  
INTRODUCED BY J. BRENDEN

**"AN ACT CHANGING THE DURATION OF CONSERVATION EASEMENTS  
FROM PERPETUITY TO A TERM OF YEARS; AND AMENDING SECTION 76-6-202,  
MCA."**

Good Morning. My name is Bruce McLeod owner and operator of the Spear Lazy U Ranch which is located fifteen miles northeast of Wilsall, Montana near the upper end of the Shields River valley. My late wife, Peggy McLeod, and I purchased the ranch in 1974 and have operated the ranch as a cow-calf operation for what is now approaching 35 years. The ranch consists of approximately 6500 acres, it supports white tail deer, mule deer, antelope, moose, elk, bear, mountain lions and numerous smaller animals along with about 400 Angus mother cows. Four miles of the Shields River plus two miles of Smith Creek run through the ranch. Peg and I put the ranch in the Montana Fish Wildlife & Parks Block Management program from the year it was initiated and we have hunters that have come back to hunt big game on the ranch for over fifteen consecutive years. All we have ever asked of fishermen that wanted to try their luck in fishing for the native Yellowstone Cutthroat Trout in the Shields or the Brook Trout in Smith Creek is they do us the courtesy of asking to fish the rivers so we can get a chance to meet them and let them know where we have breeding bulls in the pastures. We have become close friends with many of our repeat fishermen. So what is the point of the description of the ranch?

**Members of the committee, the ranch was platted and would have been subdivided in less than two years had we not purchased the land in 1974!**

I can make a strong case that the Spear Lazy U Ranch is one of the most beautiful, scenic and productive ranches in Montana. When we took possession of the ranch, most of the ranch buildings and corrals were in poor shape, as was some of the land, and it took us over 30 years of hard work and financial anxiety to put things in working order. **Both Peg and I were determined that the ranch would never fall back into the hands of those that would subdivide it and deface and ruin this land that had become a major focal point of our lives. It was our and now my desire to say "NO" to the proliferation of "twenty acre Ranch Properties", "NO" to trophy "mini-castles" built on the ridges of the pastures or on the banks of the upper Shields River, and "NO" to the scars of access roads across some of the best native hay meadows in Montana!**



**We, therefore, exercised our private property right to gradually, in a planned and orderly process, place the ranch under a conservation easement in perpetuity. This portion of Montana will forever remain a beautiful reminder of how the land should look.**

Please let me restate the obvious. When a ranch is sold in Montana as part of an estate sale or because it is simply no longer possible for the folks working the land to make a living, by far the highest probability of the next use of the land is some sort of subdivision. Senate Bill 478, if passed, not only takes away the right of the landowner to decide the long term fate of the land, it would set an artificial and arbitrary time horizon on a conservation easement. The bill seems almost designed to encourage subdivision. The words "**---execution of a new granting instrument by the parties**" virtually require the renegotiation of the easement every 15 years which is an unnecessary and onerous burden on not only the landowner but also on the nonprofit land trusts in Montana who are working to preserve one of Montana's premier assets --- its beauty.

In summary, I would ask the members of the committee to ponder several questions. Why would legislation that will invariably promote further breaking of Montana ranches into smaller housing sites be good for Montana? Why do some folks feel that landowners should not have the right to decide how to care for the land? Apparently ranchers and farmers have done things right for over a hundred years since those traveling to and through the state see nothing but beauty and space. Why would it be prudent to deprive landowners of one more way of trying to make a living on the land by taking away federal tax benefits? In short, just what, exactly, is the point of SB 478? It is a clear, if passed, that the legislation would arbitrarily take a private property right. It does not address a problem but, instead, creates multiple problems. Finally, if passed, it would guarantee, eventually, that an increased number of Montana ranches and farms will be described by "I remember when I could look out there and not see another light".

**I strongly suggest that this bill be defeated.**

Thank you for your time and attention.

Sincerely yours,

Bruce R. McLeod  
2107 Highland Court  
Bozeman, MT 59715

**To: Senate Members of the Agriculture, Livestock & Irrigation Committee**

My name is Ken Sievert; I am a fourth generation Montanan with farm and ranch property in the Gallatin Valley, and am also a grantor of a Conservation Easement on that property (in perpetuity).

I initiated actions to place my Gallatin Valley rural property in a conservation easement in 2002 and completed the work in 2004. These actions were prompted for the following reasons:

- There was, and continues to be, significant attrition of open agricultural space within the Gallatin Valley. This growth has not been well planned and systematic in spite of efforts by local planning agencies and can be characterized in part as being speculative building by non-local developers, in part as individuals wishing to relocate to 'Big Sky' country for quality of life reasons, and in part as local entrepreneurs wishing to capitalize on the inflationary land values accompanying the land 'boom'. The net result for long term committed residents has been to endure significant increases in taxes, loss of services for agricultural vocations, and some loss of quality of life issues as congestion, traffic, and other sociological factors have impacted the community. As examples; when I left Bozeman in 1965 there were (7) grain elevators within the town – now there is (1). I also personally know several agriculturalists that have felt the need to relocate elsewhere to pursue their vocation. In these circumstances Conservation easements are one tool that local rural residents can employ to assist them in remaining on their land and, at the same time, lessen impacts on local services caused by construction of county roads and other infrastructure caused by growth.
- I have a genuine concern with the loss of farmland in America. The sources of information are too lengthy to recite here but in summary the loss of farmland in our country is occurring at an alarming rate; not to mention the recent reports citing loss of quality of the remaining ground. Conservatively, we need to responsibly protect those shrinking assets. The provisions of the Farmland Protection Act are there for a reason.
- I continue to believe that there is a place within the society for single family farms. The conservation easement process provides a mechanism that allows families to remain on the land for succeeding generations if they choose to do so, with the caveat that they give up something in return. In this case what they generally give up is development rights. In my opinion, we need to promote legislation that encourages Montanan's with rural orientations to populate the rural landscape; not to eliminate them from it - for development or to facilitate consolidation of assets.
- In my particular case the affected property also provides good habitat for wildlife; the property is on an Elk migration pattern between the Gallatin and Bridger ranges of mountains and also provides sanctuary for Deer, Coyote, Fox, Bear, and an occasional Moose. These inhabitants of the land are, in my opinion, one of the reasons that Montana enjoys the reputation of being a good place to live, travel within, or to visit.
- On a personal note, I witnessed the level of effort that was required of my father and his fore-fathers before him to create a sustainable farm and ranch. They did this for their own rewards but they also unselfishly did it for the benefit of the greater community. I simply would not be able to erase their work for the gratification of a monetary sale prompted by inflationary land values. It is my intent to convey this property to my son as the fifth generation shepherd of the 'family farm'.

As I understand it, the issue of this legislative bill is 'perpetuity' as opposed to changing the philosophy of conservation easements 'et al'. The proposed change immediately raises a number of questions; as follows:

- Why is it necessary to change the current law? Current legislation provides for both limited term easements as well as easements in perpetuity.
- What would become of current easements in perpetuity? And who would pay for the change?
- Superficially it would seem to put Montana out of step with current Federal Policy as well as most other states. Could this result in reduced incentives for Montanan's to protect land, or their families, within our state?
- The proposed change to the current law undermines the binding promise of state citizens already committed to perpetuity and suggests a half-way solution; you can kind of have a conservation easement but you can't really have a fully committed easement. This smacks of the daughter that explains that she is "only a little bit pregnant".
- As noted in the introduction it took a full two plus years and the efforts of numerous individuals to create my relatively small easement; I would hesitate to tabulate the costs, financial and dedicatory, required to complete that process. It would be a shame to consider that this work had no merit.
- I entered into my agreement with good faith as a citizen exercising a private property right. The proposed change exorcizes that private property right and in the popular vocabulary of current politics constitutes a "taking". There may be circumstances where "takings" are justified; I am unconvinced that this is one of those circumstances.
- My unanswered question would be: what is wrong with the current legislation – exactly – and how does this proposal fix it?
- If the issue is a regional difference between sparsely and intensely populated areas (as it relates to the application of conservation easements) I would suggest a revision that does not obliterate half of the intent of the current law.

I thank you for the opportunity to explain my interest in conservation easements, express my views, and to ask questions. I urge you to consider this legislation very carefully as the ramifications of this change could be both profound and not in Montana's best long-term interests. I would be offended to think that at some future date my efforts to protect open space, farmland, Montana's wildlife, and my own personal history could be erased to enhance a developer's bottom line.

Sincerely,

Kenneth R. Sievert  
1602 Third Westhill Drive  
Great Falls, MT 59404

February 18, 2009

Via: e-mail- Kelly@gvlt.org

Montana State Legislature  
Attn: Agricultural Committee  
Montana State Senate  
c/o Ms. Kelly Pohl  
Land Protection Specialist  
Gallatin Valley Land Trust  
Bozeman, Montana

**Re: Senate Bill No. 478, proposed by Senator John Brenden  
To abolish the permanence of conservation easements in Montana**

Dear Members of the Agricultural Committee:

Our names are Rob and Janae' Galanis and we are the owners of 750 acres on the Horse Butte Peninsula of Hebgen Lake in West Yellowstone Montana, known as the Yellowstone Ranch Preserve and we are writing this letter to voice our strong and adamant opposition to this Bill.

We have been residents in the West Yellowstone area for the past 15-years. However, we acquired this property just under three years ago and have been working on placing a perpetual conservation easement on the property ever since.

Our property, which compared to the many vast size ranches throughout the great state of Montana, is only 750 acres. However, nonetheless is; surrounded by 18,000 acres of USFS property; has over 1-miles of shoreline on Hebgen Lake; is only five (5) miles from the Yellowstone National Park Boundary; and has been classified by Montana Fish Wildlife and Park, the U.S. Forest Service and the Trust for Public Lands, as lands that need to be protected for the abundant and various types of big game, water fowl and numerous other birds and wildlife that inhabit our property.

Our main motive for acquiring this property was to try and conserve the property's wildlife values with very limited development. We are proposing to place only seven (7) total home sites on the property as apposed to seventy-one (71), which is allowable under the current zoning. However, based upon the price we had to pay for the property, the only way we could make the acquisition of this property work, with our investment partners and still limit the development is with the current Federal Income Tax benefits that are available through perpetual conservation easements.

If this bill were to pass it would not only have a devastating affect on our property and our investment partnership, but also and as we see it, would cause future conservation easements within the State of Montana to become virtually non-existent.

Further, beside the obvious adverse and negative affects to **ALL** Montana property owners from a Federal Tax standpoint, passing this bill would also have a ripple effect on creating further job losses throughout the various Land Trust Groups and their supporting Montana companies.

So, trying to be objective we ask you to evaluate, take into consideration and directly ask Senator Brenden why he is sponsoring and proposing such a ludicrous and NON-pro-property rights Bill, especially during these extremely trying economic times? And what benefit would passing this Bill provide anyone? Please do all Montana land owners a favor and deny this Bill in committee.

Sincerely,

Rob & Janae' Galanis  
933 Catfish Lane  
P.O. Box 2066  
West Yellowstone, Montana 95758  
(406) 646-4848

February 19, 2009

State of Montana Senate  
Senate Agriculture, Livestock, and Irrigation Committee

RE: Senate Bill 478

Dear Committee Members:

My name is Zeke Dumke and I represent my family who owns the Red Creek Ranch located in Gallatin County. We are fourth generation summer residents of the Hebgen Lake area. Each summer we run approximately 200 cow/calf pairs on our ranch. We purchased the ranch from the creditors of Ski Yellowstone with the intent of retaining it as an operating ranch.

The proposed legislation, which places a term limit on conservation easements, is an illogical idea and poor policy at every level for the following reasons:

1. It takes away a property right that is an integral part of planning for many family ranch operations; the right to perpetuate ranching activity in perpetuity.
2. It eliminates the financial incentive to keep ranch property in its present use vs. selling out based on the underlying development potential.
3. What is the purpose of eliminating this property right? Landowners can already elect for a term less than perpetuity. This law reaches too far when it tells a landowner what term is appropriate for a conservation easement.
4. This bill is anti-private property rights, anti-agriculture and anti-landowner. This committee needs to understand the underlying motivation for this bill. It certainly does not represent the desires of the vast majority of landowners in the state.

Please do not allow this bill to precede any further in the process. It is an enormous step in the wrong direction. The financial impact to land owners will be immediate. The consequences to the state of Montana may not be recognized for many years but the changes will permanently change the character of this great state.

This bill must be rejected. Thank you for your consideration.

Sincerely



E. R. Dumke III  
Managing Member  
Red Creek Ranch, LLC  
West Yellowstone, Montana